

STATE REPORTER
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BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF
MONTANA:

IN THE MATTER OF THE PETITION TO
CREATE A NEW HIGH SCHOOL DISTRICT
AT HEART BUTTE, MONTANA

NO. OSPI 124-87
Decided: June 17, 1988

Findings of Fact, Conclusions of Law, and Order by Ed Argenbright,
State Superintendent.

Appeal from the Pondera County Superintendent of Schools,

DISTRICTS, Appeal from denial of petition to create a new high school
district.

FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER

Appellant, certain members of the community of Heart Butte, Montana, appeals to this State Superintendent from the Findings of Fact, Conclusions of Law, and Order of the Pondera County Superintendent of Schools, dated March 1, 1988. The County Superintendent denied the creation of a high school district.

On December 19, 1986, three members of the Heart Butte community presented a petition to create a new high school district to the Pondera County Superintendent. The petition was correct as to form pursuant to section 20-6-325, MCA.

A hearing was held before the Pondera County Superintendent on January 19, 1987. No challenge to the legal sufficiency of the petition was raised. On March 2, 1987, the Pondera County Superintendent issued an order denying the creation of the proposed high school district.

On March 16, 1987, certain members of the Heart Butte Community appealed the Pondera County Superintendent's determination to this State Superintendent. The State Superintendent subsequently conducted a hearing.

On December 15, 1987 this State Superintendent remanded the matter to the County Superintendent, with directions to take further testimony and gather additional evidence on the effect of the creation of the proposed high school district, in light of Initiative 105, Senate Bill 71, and the Montana Attorney General's Opinion No. 21, Vol. 42, and Public Law 874 funding.

On February 1, 1988, the County Superintendent held a second hearing. Evidence and legal arguments were presented. The County Superintendent issued Findings of Fact, Conclusions of Law, and an Order denying the creation of the district. The County Superintendent stated in pertinent part:

"That it is neither advisable nor in the best interests of the residents of the proposed new high school district that the petition request be granted due to the impact of Initiative 105, Senate Bill 71, Montana Attorney General's Opinion No. 21, Vol. 42, P.L. 874 Funding, and the low taxable valuation of the proposed new district."

The County Superintendent ordered, that since it is neither advisable nor in the best interests of the residents of the proposed new high school district, the petition requested is denied.

Petitioners appealed the decision to this State Superintendent pursuant to Section 20-6-325(4), MCA. The State Superintendent established a briefing schedule and conducted a fact-finding hearing on March 29, 1988. Testimony was presented. Having heard the evidence, reviewed the record transmitted from the County Superintendent, and having reviewed the briefs filed herein, this State Superintendent is prepared, and does enter these:

FINDINGS OF FACT.

1. The petition for the creation of Heart Butte High School District was presented in proper form pursuant to Section 20-6 325, MCA.

2. The Petition contained a sufficient number of signatures of residents of the proposed high school and met the statutory requirements.

3. The proposed high school district boundaries were coterminous with those of the existing Heart Butte Elementary District No. 1 in Pondera County.

4. Testimony presented to both the County Superintendent and State Superintendent indicated cultural and heritage advantages of having a high school district encompassing the Heart Butte Community.

5. Road and weather conditions in the Heart Butte area make it difficult, if not impossible, for the high school students to attend the high schools currently available to them, especially during severe winter storms which are common to the area.

6. Because of difficult financial reasons and travel considerations, numerous parents expressed that it is difficult to play an active role in the secondary education of their children because of the distances to the high school the children presently attend.

7. Numerous parents testified that the quality of education would be improved by a high school which is viewed as an integral part of the community.

8. Evaluations regarding a new high school at Heart Butte were taken by a needs assessment conducted by Dr. Robert Swan. This comprehensive document summarized the educational needs of the Heart Butte community, indicating that it is in the best interests of the children of this community to establish a high school district.

9. Evidence was presented that indicated dropout information within the Heart Butte community from 1977 through 1986. The study showed that of 102 students who graduated from Heart Butte Elementary School between 1978 and 1982, only 35 graduated from high school. The dropout rate was well over 60%. Dr. Ardys Sixkiller Clarke testified that the national average dropout rate was 12%, with the dropout rates for ethnic minorities being slightly higher. The Browning High School District dropout rate was reported at 13%.

Dr. Clarke testified in her professional opinion that a high school district established for the Heart Butte area would substantially reduce the dropout rate.

10. Petitioners presented a detailed high school educational plan for the proposed high school district. The plan examined curriculum; special services; staffing; transportation; food service;

facilities: and school finance.,

11. The Heart Butte community demonstrated that the proposed high school district program would meet current state accreditation requirements. Numerous witnesses testified before the County Superintendent in support of the petition, stating that it was in the best interests of the residents of the Heart Butte community to have the high school district established. These witnesses included John Tomasich, Superintendent of the Menominee Public School in Wisconsin, regarding the decrease in dropout rate of the students; Dr. John Reyhner, professor at Eastern Montana College; Richard Littlebear, President of the Montana State Association of Bilingual Education; and Mr. Tom Thompson, Superintendent of Browning School District and member of the State Board of Public Education. Numerous other witnesses submitted oral and written testimony in support of the proposed district. There was no credible testimony which indicated that the creation of the district was not in the best interests of the residents of the effected district.

12. The creation of the high school district will generate two costs associated with the county: - namely teacher retirement, and transportation. District Superintendent Hoyer testified that the additional teacher's retirement cost was estimated at \$15,115.62. The additional transportation cost is estimated at \$1,703.95. The cost of the transportation is minimal because the bus routes used for the elementary district will *be* used for the high school district.

13. In regards to teacher retirement, Pondera County presently levies 29.61 mills. District Exhibit 1, introduced before the State Superintendent, indicates that estimated state lottery moneys will offset the costs concerning teacher retirement. The lottery's estimated \$7.5 million will be available for distribution July 1, 1988. The projections received from the Office of Public Instruction indicate that Pondera County will receive \$66,413.91 from the lottery to offset costs of teacher retirement. The levies would be reduced 3.65 mills. This State Superintendent has relied upon and has taken administrative notice of the Pondera County retirement estimates from 1987-1988 budget data, compiled April 21, 1988 by the Office of Public Instruction. The best estimate of these teacher retirement costs indicates that Pondera County will receive approximately twice the amount of revenue from the lottery system than it would cost the county with the new district, and would not increase the mandatory mill levy on Pondera County.

14. The State superintendent takes administrative notice of testimony found in: In the matter of the Creation of the Rocky Boy High School District, OSPI No. 145-87, Dr. Thomas Shipley, that the P.L. 874 funding has been authorized through 1993. Although the U.S. Department of Education has attempted to reduce or curtail 874 funds, past history indicated consistent funding patterns.

15. Petitioners presently admit, through correspondence with their attorney submitted as evidence before the State Superintendent, that the proposed high school district would operate and maintain a quality system of basic high school education, even if 874 funds were

curtailed. Further, in an exhibit submitted to this State Superintendent from District Superintendent Thomas Hoyer, if P.L. 874 funding was equalized in the foundation program at 75% of the amount, the proposed high school district would have sufficient revenue under present estimated calculations to operate a quality system of basic high school education.

16. Testimony from District Superintendent Hoyer indicates that the high school district need not expend any revenue for capital outlay for buildings. The present elementary building was designed to house approximately 300 students. There are presently 146 students. The district maintains fully equipped rooms for home ec; science, and music. Any costs related to capital outlay would be minimal.

17. During the hearing before the State Superintendent of Schools, no opponents appeared and testified against the proposed petition. Further, no additional evidence was submitted on behalf of the opponents of the petition.

From the foregoing Findings of Fact, this State Superintendent now draws these :

CONCLUSIONS OF LAW

1. That this State superintendent has jurisdiction to determine this matter pursuant to Section 20-6-325, MCA.

2. That this State Superintendent has applied the Standard of Review found in Section 10.6.125, Administrative Rules of Montana, and Section 2-4-704, MCA, in reviewing the County Superintendent's Findings of Fact; Conclusions of Law, and Order.

3. That this State Superintendent has provided proper notice of the hearing pursuant to Section 20-6-325, MCA, and has received additional evidence by way of sworn testimony and submitted documents in the record.

4. That Section 20-6-325, MCA, allows the State Superintendent to consider evidence presented at the County Superintendent's hearing, as well as any other "pertinent material." The State superintendent has relied upon the evidence submitted in the first and second County Superintendent hearings, as well as the evidence submitted at the first and second State Superintendent hearings..

5. That the County Superintendent's Findings of Fact; and Conclusions of Law drawn therefrom, are clearly erroneous in view of the reliable, probative, and substantial evidence contained in the entire record.

6. That the County Superintendent's Conclusions of Law relating to advisability and best interests of the residents in the effected district are affected by an error of law.

7. That the petition for the creation of the new high school district meets the statutory requirements of the law.

8. It is advisable for an order to be issued for the creation of the proposed high school district.

9. It is within the best interests of the residents of the newly proposed high school district that the petition to create this district be adopted.

10. That the effective date of the order to create the new high school district shall be March 1, 1989, at which time the district must: ascertain proper membership of the Board of Trustees, adopt proper budget's, and perform other school related requirements as set forth in Title 20, MCA. That the effective date of this order is delayed so as to provide the leadership of the Heart Butte Community, Pondera County commissioners, as well as the Petitioners, with an opportunity to review the Montana Supreme Court response, and if necessary, the Montana Legislative response to the First Judicial District Court's Findings of Fact, Conclusions of Law, and Order in Helena Elementary School District Number 1, et al. v. State of Montana, et al., Cause No. ADV-87-370, as well as the Federal Government responses to the foundation program litigation.

Indeed, the first Judicial District Court has not ordered a particular level of funding for public schools. The District Court relied upon precedent set in the state of California in declaring the present system of funding unconstitutional. The California Supreme Court, in Serrano v. Priest, 141 Cal. Rptr. 315, 569 P.2d 1303 (1977), did not guarantee any level of funding to public K-12 schools. The same is true for Montana.

To date, I remain skeptical about the ultimate result of the foundation program litigation. Many have voiced an opinion as to what may be. It is my responsibility to review these upcoming crucial developments prior to opening another school door. This is particularly true for the pupils in the Heart Butte Community.

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent now renders his:

ORDER

1. That the County Superintendent's decisions, dated March 1, 1988 are reversed.
2. That the petition to create the Heart Butte District is granted, and such order is effective commencing March 1, 1989.
3. That the boundaries of the new high school district will coincide with the boundaries defined in the petition which are coterminous with the Heart Butte Elementary School District;
4. That the Heart Butte Community petitioners provide this State Superintendent with periodic informational updates regarding the status of the creation of the new high school district.

IT IS SO ORDERED.
DATED this 17th day of June, 1988.